

Pamela B. Loewenstein
Staff Attorney
Transportation Systems &
Industrial Group
The East Tower
2550 Golf Road
Rolling Meadows, Illinois 60008

Telephone: 312/640-7000

February 2, 1983

Mrs. Mildred Lee
Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Mrs. Lee:

I have enclosed four originals of the document described below to be recorded pursuant to Section 11303 of Title 49 U.S. Code.

The document included is a Lease Agreement, a primary document dated August 23, 1982.

The names and addresses of the parties to the documents are as follows:

Lessor: Evans Railcar Leasing Company
2550 Golf Road
Rolling Meadows, Illinois 60008

Lessee: Octoraro Railway, Inc.
P. O. Box 146
Kennett Square, Pennsylvania 19348

A description of the equipment covered by the document follows:

Thirty 52'6" 100-ton Gondola cars, OCTR 5600-5629 (inclusive) - AAR # G312.

A fee of \$50.00 is enclosed. Please return three originals not needed by the Commission for recordation to Pamela B. Loewenstein, Evans Products Company, 2550 Golf Road, Rolling Meadows, Illinois 60008.

A short summary of the document to appear in the index follows:

Lease Agreement dated August 23, 1982 between Evans Railcar Leasing Company, Lessor, and Octoraro Railway, Inc., Lessee, covering thirty 52'6" 100-ton Gondola cars OCTR 5600-5629 (inclusive).

Very truly yours,

Pamela B. Loewenstein
Pamela B. Loewenstein

PBL:jf

Enclosure

EVANS
PRODUCTS COMPANY
CC Washington, D. C.

13937
REGISTRATION NO. _____ Filed 1425

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INTERSTATE COMMERCE COMMISSION

3-035A023

No. FEB 4 1983

Date

Fee \$50.00

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INTERSTATE COMMERCE COMMISSION

AGREEMENT made and entered into this 23rd day of August, 1982, between

EVANS RAILCAR LEASING COMPANY
an Illinois corporation (hereinafter called "Evans")

and

OCTORARO RAILWAY, INCORPORATED, a Pennsylvania Corporation
(hereinafter called "Lessee")

RECITALS

Lessee desires to lease from Evans as Lessor certain railroad cars, hereinafter specifically designated or to be specifically designated, all upon the rentals, terms and conditions as set forth in this Lease.

AGREEMENT

It is agreed:

1. Lease of Cars. Evans agrees to lease to Lessee and Lessee agrees to and hereby lease from Evans that number of railroad cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 of this Lease and as is set forth in Schedules which may from time to time be added to this Lease. The Cars covered by this Lease are those which shall be delivered to and accepted by or on behalf of Lessee pursuant to the terms hereof. This Lease shall become effective with respect to any Car as of the date of its delivery and acceptance hereunder and shall continue with respect to such Car for the term provided in the Schedule covering such Car unless sooner terminated as hereinafter provided. Evans shall deliver Cars f.o.t., at the delivery point specified in the Schedule covering such Cars and from and after such delivery, if any action by Lessee either oral or written cause cars to be routed in such a manner as to incur transportation cost; Lessee shall pay all costs and expenses on account of transportation or movement of the Cars to and from any place and for any reason whatsoever.

2. Rental. Rental shall be equivalent to but not less than ninety percent (90%) of all car hire earned while cars are off the Lessee's railroad. Car hire shall include but not be limited to mileage charges, straight car hire, and incentive car hire (if any) payable to Lessee on account of such cars. Evans shall perform all car hire accounting for Lessee and shall remit to Lessee Ten percent (10%) of all car hire earned while cars are off the Lessee's railroad thirty (30) days after the car hire payments are received.

Daily Car Usage of each Car shall be deemed to be the average Car Usage as finally determined for all Cars covered by this Lease as of the end of each calendar quarter or other applicable period during the term of this Lease. Rental on each Car shall accrue from and after the date of delivery and acceptance of each Car; provided, however, that rental shall be payable to Evans only for amounts actually received by or credited to Lessee.

3. Acceptance of Cars. Within three (3) days after Evans shall give Lessee notice that some or all Cars covered by a Schedule are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point of delivery and accept or reject them as being or failing to be in compliance with the terms hereof. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall be conclusively deemed to meet all requirements of this Lease and shall be conclusively deemed delivered to and accepted by Lessee.

4. Records. Evans shall keep records of and monitor the use and movements of all Cars and shall upon written request of Lessee provide all information and copies of all records and reports, pertaining to the Cars received by Evans or available to it. Lessee will at Evans' expense file such applications for relief from any Interchange Rules as Evans may direct to increase revenues of the Cars and will at Evans' expense take all appropriate action to record and register the Cars as Evans may request. In addition, if Lessee knows of the initial loading of any of the Cars, Lessee shall promptly thereafter notify Evans of the date, handling railroad and destination of such initial loading.

5. Use - Lettering. Lessee shall use the Cars in a careful and prudent manner in compliance with all Interchange Rules and solely for the uses for which they were designed. From and after the delivery of a Car to Lessee, so long as Lessee shall not be in default hereunder, Lessee shall be entitled to the use of the Car for the full term of this Lease, but solely within the continental limits of the United States of America. Except for the lettering to be placed on the Cars by Evans prior to delivery indicating the interest of Lessee, Evans and any assignee or mortgagee of Evans as permitted in Paragraph 11 hereof, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of Evans. Lessee shall give preference and shall load the Cars prior to loading similar railroad cars leased from other parties or purchased by Lessee subsequent to the date of this Lease or interchanged with the other railroads, provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide

transportation and facilities upon reasonable request to shippers on its railroad tracks, and provided further, Lessee shall not have to give priority to the loading of the Cars at the expense of unreasonably disrupting Lessee's normal operations.

6. Repair Work. Except as otherwise provided herein, Evans shall at its sole cost and expense perform all Repair Work or authorize or cause same to be done. Lessee shall at its sole cost and expense perform or cause to be performed all Repair Work required by reason of the negligence of Lessee or an affiliate of Lessee. Evans shall have a duty to promptly perform Repair Work for which it is responsible, but such obligation shall not commence until Evans is informed of the need for such Repair Work. Evans may require Lessee to return Cars for preventive maintenance or Repair Work and may withdraw from this Lease any Cars which it in its sole discretion deems uneconomical for Repair Work of any kind.

7. Casualty Cars. Evans shall bear the risk of any Car which is lost, stolen, destroyed or damaged beyond economical repair ("Casualty Car") other than on Lessee's lines. Lessee shall bear the risk of and be responsible for any Car which is lost, stolen, destroyed or damaged beyond economical repair on its lines and shall within thirty (30) days after the occurrence of any such event, pay to Evans the amount provided in the Interchange Rules to be paid for such Casualty Car. This Lease shall terminate as to any Casualty Car on the date on which the casualty occurred. All payments for Repair Work or in connection with the loss of any Casualty Car due from third parties shall be assigned to and belong to Evans and Lessee shall cooperate with Evans in the prosecution and collection of all claims therefor.

8. Indemnities. Evans agrees to indemnify Lessee and hold it harmless from any loss, expense or liability which Lessee may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession, or operation of the Cars while subject to this Lease, excepting only any such loss, expense or liability which arises from Lessee's negligence or which arise as a result of the operation of the Cars on Lessee's lines and Lessee shall indemnify Evans for such loss, expense or liability. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

9. Taxes. Evans shall be liable for and pay all Federal, State or other governmental property taxes assessed or levied against the Cars. Lessee will be responsible for complying with all state and local laws requiring the filing of ad valorem tax returns on the equipment. Lessor shall be given a reasonable time to review and approve all tax returns prior to filing. Lessee shall be liable at all times for and shall pay or reimburse Evans for payment of (i) all Federal, State or Local sales or use taxes imposed upon or in connection with the Cars, this Lease, or the manufacture, acquisition, or use of the Cars for or under this Lease, (ii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars.

10. Termination. This Lease shall terminate upon expiration of its term, at election of either party hereto by reason of the default or breach of the other party in the terms hereof, or upon the election of Evans as hereinafter provided. In the event of a default or breach by either party, the other party may elect to terminate this Lease with respect to less than all of the cars. In the event that (i) daily Car Usage for all Cars or any group of Car in any calendar quarter is less than 70% or (ii) the rental payable to Evans during such quarter averages less than \$16.15 per car per day, then Evans may at its option upon thirty (30) days notice to Lessee terminate this Lease in its entirety, or terminate the Lease as to any or all of the Cars subject to this Lease or any Schedule hereto. Lessee shall at the termination of the Lease with respect to any Cars return such Cars to Evans in the same condition (except to Casualty Cars) in which the Cars were furnished and maintained by Evans during the term hereof, ordinary wear and tear excepted. Upon the termination of this Lease with respect to any or all Cars, Lessee shall at its sole cost and expense forthwith surrender possession of such Cars to Evans at a railcar facility to be designated by Evans. Lessee shall provide free storage for a period of up to 90 days for Cars as to which the Lease is terminated. This Lease may be terminated as to all Cars or as to any group of Cars covered by a Schedule without termination of the Lease as to Cars covered by any other Schedule. From and after termination of this Lease with respect to any Car and until its return to Evans all amounts earned by such Car shall be paid to Evans as additional rental for use of the Cars during the term hereof.

11. Sublease and Assignment. The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan the Cars without the prior written consent of Evans.

(b) all rights of Evans under this Lease may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part and Evans agrees to give notice to Lessee within 30 days of such assignment, pledge, mortgage, transfer or other such disposition. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust covering the cars heretofore or hereafter created by Evans.

If Evans shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by Evans shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

12. Default. If Lessee or Evans shall fail to make any payment required hereunder within five (5) days after same shall have become due or shall breach any representation or warranty contained herein or shall default or fail for a period of ten (10) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against Lessee or Evans under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of Lessee or Evans or their property, or Lessee or Evans shall make a general assignment for the benefit of creditors, then and in any of said events Evans or Lessee, as the case may be, may in addition to all other rights and remedies provided in law of equity, upon written notice to such effect, terminate this Lease in its entirety or with respect to any group of Cars with respect to which said default has occurred and thereafter recover any and all damages sustained by reason of Lessee's or Evans' default. The obligation to pay rental then or thereafter due or any other sum or sums due and unpaid or any damages suffered by reason of Lessee's or Evans' default hereunder shall survive the termination of the Lease and the retaking of the Cars.

13. Definitions. For all purposes of this Lease the following terms shall have the following meaning:

"Repair Work" - all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules and preventive maintenance as determined by Evans to keep and maintain the Cars in good working order and repair.

"Interchange Rules" - all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time be the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

"Car Usage" - a percentage equal to the quotient obtained by dividing the aggregate number of hours in a calendar year (or other applicable time period) in which straight car hire is earned on a Car by the Lessee commencing with its date of delivery, by the aggregate number of hours in such year (or other applicable time period) in which the Car is under lease to Lessee commencing with its date of delivery.

14. Representations. Lessee and Evans respectively covenant, warrant and represent that all of the following matters shall be true and correct at all times that any Car is subject to this Lease:

- (a) Each party is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power, authority and is duly authorized and qualified to do business wherever it transacts business and such qualification is required, and has corporate power to and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder.
- (b) This Lease has been duly executed on behalf of each party and constitutes the legal, valid and binding obligation of the respective parties enforceable in accordance with its term.
- (c) No governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of either party in connection with this Lease or any action contemplated on its part hereunder, nor will the execution or performance of this Lease violate any law, judgement order or regulation, or any indenture or agreement binding upon either party; and
- (d) Neither party nor their respective counsel know of any requirements for recording, filing or depositing this Lease other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of Evans or its assignee or mortgagee in the United States of America.

Upon request of Evans or its assignee or mortgagee at any time or times, Lessee shall deliver to Evans an opinion of its counsel addressed to Evans or its assignee or mortgagee, in form and substance satisfactory to Evans or its assignee or mortgagee, which opinion shall confirm the matters set forth in this Paragraph 14 (a) through (d).

15. Miscellaneous.

- (a) This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns to the extent permitted herein.
- (b) Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States Mail, registered or certified, postage prepaid addressed to:

Evans at: East Tower
2550 Golf Road
Rolling Meadows, Illinois 60008

Lessee at: Octoraro Railway, Inc.
P.O. Box 146
Kennett Square, Pennsylvania 19348

or such other address as either party may from time to time designate by such notice in writing to the other.

- (c) Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect Evans' title, which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease and shall promptly discharge any such lien, encumbrance or legal process. Lessee shall take all action requested by Evans to confirm Evans' interest in the Cars as Lessor and that Lessee has no interest in the Cars other than as Lessee hereunder.
- (d) So long as Lessee is not in default under this Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars.
- (e) During the continuance of this Lease, Evans shall have the right, at its own cost and expense, to inspect the Cars at any reasonable time or time wherever the Cars may be. Lessee shall, upon request of Evans, but no more than once every year, furnish to Evans two (2) copies of an accurate inventory of all Cars in service.

IN WITNESS WHEREOF, Evans and Lessee have duly executed this Lease
as of the day and year first above written.

EVANS RAILCAR LEASING COMPANY
an Illinois corporation

By Arthur C. Salter
Vice President

ATTEST:

Lawrence B. Range
ASST. Secretary

OCTORARO RAILWAY, INCORPORATED
a Pennsylvania corporation

By Mark Bennett
President

ATTEST:

Calvin A. Nichols
Secretary

STATE OF ILLINOIS
COUNTY OF COOK

On this 5th day of January, 1983, before me personally appeared Curtis C. Tatham, to me personally known, who being by me duly sworn, says that he is President of EVANS RAILCAR LEASING COMPANY, and Laurence P. Porges personally known to me to be the Vice Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Janette C. Benedetto
Notary Public

My Commission Expires July 25, 1983

STATE OF Pennsylvania
COUNTY OF Christy

On this 3rd day of November, 1982, before me personally appeared Mark A. Bennett, to me personally known, who being by me duly sworn, says that he is the President of Pottsville Railway Inc., and Calvin A. Nichols, Jr. personally known to me to be the Vice Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Peggy Holt Cusatis
Notary Public

PEGGY HOLT CUSATIS
MY COMMISSION EXPIRES
ON JUNE 3, 1986.

EXHIBIT A

Schedule 1 to Lease dated August 23, 1982, by and between EVANS RAILCAR LEASING COMPANY ("Evans") and OCTORARO RAILWAY, INC. ("Lessee").

CERTIFICATE OF ACCEPTANCE

August 23, 1982

Evans Railcar Leasing Company
2550 Golf Road
Rolling Meadows, IL 60008

Gentlemen:

The undersigned, being a duly authorized representative of Lessee, hereby accepts Thirty (30) Cars bearing numbers as follows:

OCTR 5600 through 5629, inclusive

for the Lessee pursuant to the Lease and certifies that each of said Cars is plainly marked in stencil on both sides of each Car with the words

EVANS RAILCAR LEASING COMPANY
OWNER AND LESSOR

Title to this Car subject to documents recorded
under Section 20c of Interstate Commerce Act

in readily visible letters not less than one inch (1") in height; and that each of said Cars conforms to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee. If the Lessee is a railroad, Lessee hereby certifies that it is an interstate carrier by rail and that the Cars are intended for actual use and movement in interstate commerce.

OCTORARO RAILWAY, INC.

Lessee

EVANS' LOT NO. 1988-00

SCHEDULE 1

Page 1 of Schedule 1 dated August 23, 1982 to Lease dated August 23, 1982 by and between EVANS RAILCAR LEASING COMPANY ("Evans") and OCTORARO RAILWAY, INC. ("Lessee").

TYPE AND DESCRIPTION OF CAR:

52'6" 100-ton Gondola with 4'6" sides

NUMBER OF CARS:

30

INTERIOR EQUIPMENT:

None

SPECIAL LININGS:

None

PERMITTED LADING USE:

Non-Corrosive

REPORTING MARKS AND NUMBERS:

OCTR 5600-5629

SPECIFICATIONS DESIGNATED BY LESSEE:

None

INITIAL F.O.T. POINT:

Modena, Pennsylvania

Page 2 of Schedule 1 dated August 23, 1982 to Lease dated August 23, 1982 by and between EVANS RAILCAR LEASING COMPANY ("Evans") and OCTORARO RAILWAY, INC. ("Lessee").

LEASE TERM: 1 year

PER DIEM SHARE: Evans receives first ninety percent of 100%

SPECIAL TERMS: None

OCTORARO RAILWAY, INC.
Lessee

By: Mark Bennett
President

(CORPORATE SEAL)

ATTEST:

Calvin A. Nichols
Secretary

COMPANY

EVANS RAILCAR LEASING

By: Butler C. Selha
President

(CORPORATE SEAL)

ATTEST:

Reuben S. Orange
ASST. Secretary